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No. 663

IN THE

Supreme Court of the United States

October Term, 1965

NEWSPAPER DRIVERS & HANDLERS LOCAL UNION NO. 372, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, IND.,
Petitioner

-vs-

DETROIT NEWSPAPER PUBLISHERS ASSOCIATION, THE EVENING NEWS ASSOCIATION, Owner and Publisher of the Detroit News, KNIGHT NEWSPAPERS, INC., Owner and Publisher of The Detroit Free Press, and NATIONAL LABOR RELATIONS BOARD,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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THE INLAND PRESS, DETROIT, MICHIGAN

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

ON BEHALF OF RESPONDENTS, DETROIT NEWSPAPER PUBLISHERS ASSOCIATION, THE EVENING NEWS ASSOCIATION AND KNIGHT NEWSPAPERS, INC.

CITATIONS TO OPINIONS BELOW

The Decision and Order of the National Labor Relations Board are reported in 145 NLRB 996. The Opinion of the Court of Appeals for the Sixth Circuit, vacating the Board's Order, denying enforcement of its Order and dismissing the petition of Newspaper Drivers & Handlers Local Union No. 372 (petitioner herein) is reported at 346 F. 2d 527.

JURISDICTION

Petitioner's statement of this Court's jurisdiction to review is accepted except that it is noted that petitioner did not join with the Board in petitioning the Court below for a rehearing, nor has the Board seen fit to join in this Petition or file a separate petition for certiorari.

QUESTIONS INVOLVED

In its statement of "Questions Presented", petitioner poses two questions, each of which is based on a false assumption.

Question 1 inquires whether an employer violates Section 8(a)(1) or (3) of the Act[1] by locking out its employees prior to a bargaining impasse. No such issue or question was involved or presented in this case. The Trial Examiner and the Board made no finding that a bargaining impasse did not exist. The question was not posed to the Court below. The record clearly demonstrates that an impasse did in fact exist prior to the lockout.

Question 2 inquires whether an employer violates Section (8)(a)(1) and (3) of the Act when it locks out its employees to bring pressure upon another's employees who are on strike. No such issue or question was involved or presented in this case. The lockout finally resorted to by the News[2] was in support of *its own position,* both employers being confronted with identical demands by the same union.

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[1]Refers to sections of the National Labor Relations Act as amended, 61 Stat 140, 20 U.S.C. §158(a) (1) and (3) (1958 ed.). Set forth in full in petitioner's Appendix "F", p. 88.

[2]Respondent, The Evening News Association, is referred to herein as "the News", Respondent, Knight Newspapers, Inc., as "the Free Press", and Respondent, Detroit Newspaper Publishers Association, as "the Association".

Question 3 was posed in the Court below by petitioner. The Board opposed petitioner on this question. Since the Court below held that the lockout was not in violation of the Act it dismissed petitioner's appeal on this question.

The question presented is whether or not the Court below, in finding that a three-day temporary layoff by the News did not violate Section 8(a)(1) or (3) of the Act in the circumstances of this case, violated any principle announced in *American Ship Building Co.* v. *Labor Board*, 380 U.S. 300, and *Labor Board* v. *Brown*, 380 U.S. 278.

The decision below presents no novel or important questions of legal principle warranting review by this Court nor does it involve any conflict with any decision of this Court or the decisions of the Courts of Appeal of other circuits. Because of the particular nature of bargaining by the Detroit newspapers, the decision can have no impact beyond its context. The fact that the decision below does not present an important question of federal law in the Government's view is emphasized by the Board's failure to petition for certiorari as was its right.[3]

STATUTES INVOLVED

In addition to the statutory provisions cited by petitioner are those cited by the Court in *American Ship Building*, 380 U.S. at 315, i.e., 29 U.S.C. §§158 (d)(4), 173(c), 176 and 178. These are printed in pertinent part in Appendix A, infra, p. 20.

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[3]Petitioner states (Pet. 3) that "the Board will support, *with some limitations*, the granting of this petition". We can only speculate as to those "limitations" but the fact remains that the Board did not see fit to initiate this review.

STATEMENT OF THE CASE

Petitioner's Statement cannot be accepted in any consideration of its Petition. Not only are there major misstatements of fact but much is ignored without which there can be no fair understanding of what the Court is asked to review. In view of the extensive record below,[4] it would unduly prolong this brief to detail the events of 1961-1962 which culminated in the strike at the Free Press and the ensuing suspension and lockout by the News. We therefore limit ourselves to a brief review of what occurred, what has been misstated and what has been ignored.

This was a Section 8(a)(1) and (3) charge, involving alleged misconduct by respondents during the course of bargaining in 1961-1962 with 14 unions for 21 different contracts. Good faith bargaining was conceded by the Board's failure to charge a refusal to bargain under Section 8(a)(5).

We start with the major premise, ignored by petitioner, that the Board expressly found no allegation or evidence of any interference, restraint or coercion of respondents' employees independent of that which might be inferred from the temporary layoff or lockout by the News from April 16-19, 1962. There was no evidence or finding of a design to destroy or frustrate collective bargaining, no anti-union animus and no purpose to discipline employees for adhering to their union's demands (Pet. App. A 17, 18).[5] It was

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[4]The record comprises five printed volumes of transcript and exhibits. The hearings commenced September 17, 1962 and were not concluded until November 2, 1962. More than twenty witnesses testified as to the Teamster strike and lockout.

[5]Pet. App. A refers to the appendix attached to the petition containing the opinion of the Court below, App. B to the appendix containing the Board's decision and intermediate report.

undisputed that "The only question between the News and the Teamsters concerned the terms of their collective bargaining agreement" (Pet. App. A 18). In short, like *American Ship Building,* the lockout in this case, to be held illegal, must carry its own indicia of intent or must be so inherently prejudicial to union interests as to be a violation of the Act.

Bargaining by respondents with the Teamsters[6] commenced prior to expiration of the old contracts on November 15, 1961 and continued, at least with the Free Press, for six months thereafter without success until the Teamsters, on April 11, 1962, struck the Free Presss after rejecting its "latest best offer" (Pet. App. A 14-15, B 47-49; R IV 630a-631a; R V 995a-999a).[7] From early January, 1962 until after the Free Press strike, the Teamsters, despite repeated requests, refused (with the exception of one abortive session) to bargain with the News (Pet. App. A 14, B 15, 47, Fn. 17; R V 999a).

A major misstatement of fact by petitioner is that it was free to strike the Free Press but not the News—allegedly because of a clause in the old contract which had expired November 15, 1961 (Pet. 4). In other words, petitioner claims that the News was not threatened with a strike when it locked out its employees (Pet. 11). Despite a similar contention below, no such finding was made by the Trial Examiner, the Board or the Court.

This error is best demonstrated by the Teamsters' own actions. Prior to the Board proceedings no mention was

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[6]Petitioner, Newspaper Drivers & Handlers Local Union No. 372, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., is sometimes referred to herein as "the Teamsters".

[7]R IV and R V refer to the volume number of the printed record and 630a-631a, 995a-999a to the page number of those volumes.

ever made of such a contract commitment by the Teamsters. Instead, before expiration of the old contracts, the Teamsters gave requisite notice to state and federal mediation to clear the decks for strike action against both the News and Free Press pursuant to Section 8(d)(2) and (4) of the Act (R V 1005a). Subsequently, in November, 1961, petitioner flatly rejected a request by both the Free Press and the News for an extension of the old contracts, subject to five-day termination notice by either party (Pet. App. B 47; R III 446a-448a; V 1002a; I 49a). Following this, in December, 1961, Teamsters gave their negotiating committees strike authority for both papers (by an overwhelming vote in the case of the News), which fact was communicated to respondents (Pet. App. B 47 and Fn. 18).[8]

Lastly, when Mr. Hoffa took charge of negotiations in April 1962, he told the News to be present on a standby basis at a Free Press meeting "*because the issues at the News would have to be settled or they'd be on strike also*" (Pet. App. A 15, 16, B 51 and Fn. 20). These issues were not settled prior to the lockout. In view of the above undisputed facts it is idle to say that the News was not threatened with a strike prior to its lockout. The fact is that it was under constant threat of strike without even the limited assurances given the employer in *American Ship Building*.

Another major misstatement is that the News locked out its employees on April 16, 1962 prior to any impasse in bargaining (Pet. 7) whereas an impasse had concededly been reached at the Free Press prior to the Teamster strike on April 11, 1962 (Pet. 4). This claim, made without record reference, will not bear analysis. No such finding was made

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[8]Fn. 18 refers to the footnote on page 47 of Appendix B to the Petition.

by the Trial Examiner or the Board. The record is to the contrary. If there was an impasse at the Free Press the same was true of the News.

Thus, it is undisputed that the Free Press, under strike ultimatum, offered the Teamsters its "latest best offer" on April 11, which was summarily rejected by the membership and a picket line established (Pet. App. A 14, B 49). Prior to this offer the publishers had consulted together, as was their practice when demands made were of common interest (Pet. App. B 69). Of the eighteen Teamster demands then remaining, there were three of such basic importance to both papers that the News agreed to support the Free Press if the latter were struck because it did not agree to these demands. (Pet. App. A 15, B 48; R IH 579a-586a; IV 644a-646a; V1139a-1140a). Petitioner concedes that its demands created an impasse at the Free Press (Pet. 4).

On April 12, 1962, the News received a revised set of proposals by the Teamsters (the first since December 1961). (Pet. App. B 47, Fn. 17, 49; R IV 636a). These proposals contained at least ten demands which had also been made of the Free Press (R V 1101a; Pet. App. B 48). Included were the identical three basic demands. This was prior to any suspension of publication or lockout by the News. At this point Mr. Hoffa took charge of negotiations and scheduled meetings with both papers, informing the News that if the issues were not resolved as to them they'd be on strike also (Pet. App. B 51 and Fn. 20; R IV 807a-808a).

Meetings with the Free Press and News on April 13 and 14 did not resolve these issues (Pet. App. B 51). At the conclusion of the News meeting, Hoffa announced that he would take the "company's last proposal" (a proposal made

four months before in December, 1961) to the membership despite protests by the News that this was not their last or best proposal and that they were willing to continue negotiations. It is undisputed that Hoffa's reply was to the effect that "regardless of whether it is the best proposal . . . this is your final best offer and it is going to be submitted to the union" (R IV 636a). Since the Teamsters had already rejected an even better offer from the Free Press, similar rejection of this old offer was a foregone conclusion. No further meetings were scheduled (R III 501a) and Mr. Hoffa left town. On April 16, 1962, confronted with this situation, the News temporarily laid off its employees (Pet. App. B 50-51).

In light of the above, with substantial economic issues unresolved, a strike threatened and a refusal by the Teamsters to continue the bargaining, it is clear that a bargaining impasse had been reached to the same extent at the News as at the Free Press and to the same extent as in *American Ship Building*, 380 U.S. at 303.

A further misstatement, and one corollary to the above, is that following the above meetings, negotiations were "recessed" until April 18, 1962, (Pet. 5), prior to which date the News locked out its employees. There was no "recess." As noted above, Mr. Hoffa refused to continue negotiations and no further meetings were scheduled after April 14, 1962. What did take place is undisputed. On the day of the layoff (April 16), respondents proposed to Hoffa mediation by *a third party of his choice* (R V 1000a). The next day they agreed to joint mediation (R V 1001a) and mediation accordingly took place on April 18 with then Police Commissioner Edwards (now Judge of the Sixth Circuit Court of Appeals) acting as mediator (Pet. App. A 16,

B 52). This resulted in an agreement ending the strike and lockout on April 19, 1962 (Pet. App. B 52).

The newspaper business and its labor relations, particularly in Detroit, are peculiar in nature, bearing no resemblance to the modern industrial type union, negotiating for all employees of a given employer. The Detroit newspaper business has been organized on a craft union basis for many years (Pet. App. B 39; R V 1112a). Recognition of most of these unions antedated the Wagner Act. These craft locals represent skilled employees performing similar functions at both papers (Pet. App. B 39, 40). The Teamsters are one such union, representing circulation department employees. Respondents have recognized the Teamsters for over twenty years (Pet. App. A 18, B 66, 67). In fact, the two full-time local officers who controlled negotiations at both papers had held office since 1938 and 1945 (R II 247a, 316a).

Bargaining with 14 unions for 21 different contracts (Pet. App. B 39), all commencing at or about the same time and continuing concurrently until agreement is reached with each union (Pet. App. B 68; R V 1112a), is not a simple matter. Of necessity, bargaining with one local representing two groups of employees at both papers is interrelated and there is also a bargaining relationship between the various locals—particularly as regards basic economic demands. Thus, in 1961-1962, prior to the Teamster strike, agreement had been reached with several crafts establishing a wage increase pattern. One of the three basic demands by the Teamsters which caused the Free Press strike and the News lockout was for a wage increase in excess of that pattern (Pet. App. B 48). The effect of a concession to such a demand on current and future negotiations needs no elaboration.

Because of the complexity of this kind of bargaining and the necessity for a united front on common issues, the publishers had many years before formed the Association to handle their labor negotiations (Pet. App. A 14, B 35, 51, 52, 63, Fn. 36; R III 410a-411a, 414a-419a). All contracts were negotiated at the Association's offices with the Association's Secretary present (R III 414a-419a). In the case of every craft union (except the Teamsters) representing employees performing similar functions at both papers, a "direct" representative of both papers attended bargaining sessions (R III 410a-411a, 414a-419a). In the Teamster's case, a "direct" representative of only one paper and the Association Secretary attended (Pet. App. B 68). But each paper was advised of the other's progress and they consulted with one another on common issues (Pet. App. A 15, B 25, Fn. 5, 69). Historically, the basic economic terms of both contracts with the Teamsters had been substantially identical (Pet. App. B 71).

This difference in bargaining with the Teamsters was pivotal to the Board's finding that all such crafts, excepting the Teamsters, bargained on a multi-employer basis in the traditional sense while Teamsters did not (Pet. App. A 15, B 76-78). It was likewise critical to the Board's finding that, when these other craft unions employed "whipsaw" tactics, the publishers were free to support one another, while they were literally defenseless to resist similar tactics by the Teamsters (Pet. App. B 76-78).

With demands made of the News identical to those which caused the strike at the Free Press, for the News to have continued publication would have been fatal to its bargaining position as well as that of the Free Press. To the normal leverage of any strike would have been added the far greater

pressure on the Free Press of business lost, perhaps forever, to the News. Concession by the Free Press would have been accompanied by an ultimatum and strike at the News, with the same added leverage in its case of a resumption of publication by the Free Press.[9] This, of course, is a "whipsaw" strike. Two competing companies bargaining with a common union over common issues, but rather than a common strike, selective, consecutive shutdowns used by the union to gain concessions first from one employer, then the other. Participation by the News in the first stage of the Teamsters' whipsaw would have been participation in a strike against itself.

In a belated effort to bring itself within its interpretation of *United Mine Workers* v. *Pennington*, 381 U.S. 657, petitioner makes the erroneous statement that the News' lockout was for the purpose of "determin(ing) the wages and working conditions of employees of the Free Press" (Pet. 10) and that "the News enmeshed both itself and its employees in the dispute between the Free Press and Local 372 in an effort to influence the outcome of that dispute." (Pet. 11). This totally neglects the fact that Local 372 had already enmeshed the News and its employees in the same dispute by reason of the identical demands made of both papers, and the further fact that the News had received an ultimatum from Mr. Hoffa prior to its lockout, as had the Free Press prior to its strike.

As the Board found, "the News considered three (issues) as being vital to *its bargaining* and urged the Free Press to maintain its position on these under all circum-

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[9] *Clune* v. *Publishers Ass'n. of New York City*, 214 F Supp. 520, 523 (DSD NY, 1963), aff'd. per curiam 314 Fed. 2d 343 (CA2 1963).

stances" (Pet. App. A 15, B 25).[10] It is undisputed, as the Court below found, that the only question between the News and the Teamsters concerned the terms of their collective bargaining agreement (Pet. App. A 18). Hence, when the News laid off its employees it was concerned with its own bargaining position and the obvious effect which a concession by the Free Press would have on that position. Nothing more.

ARGUMENT

As has been seen, the major reasons advanced for granting the writ are three: (1) the News locked out its employees prior to an impasse in bargaining; (2) the purpose of the lockout was to bring pressure upon the striking Free Press employees who bargained separately, and (3) there was no strike threat at the News because the Teamsters were bound by contract not to strike. If the basic premise for each is false then the reasons, if any, for granting the writ disappear.

The first premise is that an impasse did not exist at the News. The presence or absence of an impasse is an afterthought. It is a studied effort by petitioner to limit the principles enunciated in *American Ship Building* to its precise facts. Put more bluntly, it seeks to label as a *per se* violation of the Act any lockout occurring prior to an impasse in bargaining (Pet. App. A 17, 19). The Board nowhere found that there was not an impasse. No record reference is cited for petitioner's flat statement that there was no im-

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[10]As the Trial Examiner put it (App. B 48): "They (the News and Free Press) concluded, looking at the '18 issues remaining' between the Free Press and the Teamsters, that 10 were 'joint'—i.e., *of interest to the News in its negotiations as well.*"

passe at the News. It concedes that one existed at the Free Press. If this be so, then, as we have demonstrated, there was also an impasse at the News.

However, even if it be assumed that there was no impasse, it is clear from *American Ship Building* and *Brown* that the Court did not intend merely to create another limited exception to the Board's *per se* approach to lockouts. If it did then much of what was there said lacks any meaning.[11] The context of this case is sufficient to demonstrate that (Pet. App. A 20).

Compared with *American Ship Building*, there is, in the extensive record below, an equal lack of independent evidence of anti-union motivation or of intent to interfere with employee rights. There was no refusal to bargain charge under Section 8(a)(5). The temporary lockout was finally resorted to only after six months of negotiation had failed to resolve the basic dispute between petitioner and respondents. Even then its purpose was not to force acceptance of respondents' demands but to resist petitioner's demands,

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[11]As an example the Court in *Brown*, 380 U.S. at 283 and *American Ship Building*, 380 U.S. at 306, cited approvingly *Labor Board* v. *Dalton Brick & Tile Corp.*, 301 F. 2d 886. There was no bargaining impasse at the time of the lockout in that case. As the Court below correctly noted (Pet. App. A 17):

> "While in *American Ship Building* there was an impasse in the negotiations between the employer and the union, we do not think the teaching of that case merely adds another exception to the Board's category of permissible lockouts."

If the lockout is to be *per se* illegal whenever an impasse has not been reached (as petitioner contends) then the broad principles set forth in *American Ship Building* may be easily circumvented by a union's refusal to bargain (as in this case) or by a pretense of bargaining—all backed by authority to strike at a time most advantageous to the union.

which were in excess of increases already granted and which, in respondents' opinion, threatened effective control of their entire distribution system. The News did not continue the lockout until the necessary concessions had been made by the union as in *American Ship Building*. Instead, on the very first day of the layoff, they agreed to joint mediation of the dispute by a third person of the Teamsters' choice.

Relying on *American Ship Building's* holding that to establish a violation of Section 8(a)(1),

> "It must be shown that the employer has interfered with, restrained or coerced employees in the exercise of some right protected by Sec. 7 of the Act" (Pet. App. A 17),

the Court below emphasized that in this case (Pet. App. A 18),

> "... 'there is no allegation that the employer used the lockout in the service of designs inimical to the process of collective bargaining.' . . . There is no finding that the News was hostile to the Teamsters, or that it in any way attempted to interfere with the Teamsters' right to collective bargaining, or that the layoff was designed to discipline the employees for adhering to its union demands. Nor would the facts support such a finding. The News as well as the Free Press had a long record of dealing with the Teamsters. There was no disposition manifested to refuse to bargain with the Teamsters or to discourage membership in its union. Nor was there any animus shown toward the organization of the Teamsters or any of its members. The only question between the News and the Teamsters concerned the terms of the collective bargaining agreement."

The Court below further referred to *American Ship Building's* holding that to support a violation of Sec. 8(a)(3),

the Board must find ". . . 'an intention to discourage union membership or otherwise discriminate against the union . . . a desire to discourage membership in the union as distinguished from a desire to affect the outcome of the particular negotiations in which he was involved'." (Pet. App. A 18)

Relating the above to this case, the Court below correctly concluded (Pet. App. A 19):

> "What the (Supreme) Court said about the lack of evidence and findings (in *American Ship Building*) is eqally true in the case at bar . . . ."

Throughout the 1961-1962 bargaining the Teamsters were the aggressors. It was their demands (not the publishers') for contract improvements (in excess of those agreed to by other crafts) which provoked first the ultimatum, then the impasse and strike at the Free Press, despite repeated concessions by the latter (R I 49a-51a, III 464a-465a, 470a-471a, 566a-579a, 588a-593a, V 1108a-1012a, 1126a-1130a, 1131a, 1132a-1137a). It was the Teamsters who voted overwhelmingly to strike both papers and flatly refused the publishers' offers to extend the old contracts. It was the Teamsters who concededly refused to bargain with the News for over almost three months. It was Mr. Hoffa who told the News that all issues would have to be settled or they'd be on strike also. And it was he who terminated the negotiations the night of April 14, 1962 with the avowed purpose of taking a four-month old proposal (which resolved none of these issues) to the membership despite the News' protest that this was neither its last nor best offer and that it was willing to continue negotiations.

Nor did the News lockout immediately after the Free Press strike. Instead, to avoid the whipsaw, it suspended publication but paid its employees in full (Pet. App. A 15).

This the Board said it could legitimately do. It resorted to the lockout only after Mr. Hoffa terminated negotiations as above described. The lockout was a three-day temporary layoff with no effort to publish or operate with permanent or temporary replacements.[12]

This was not a case, such as those cited by petitioner, or other cases, where the employer used the lockout as an "offensive" weapon to force acceptance of his demands.[13] (Indeed, Mr. Hoffa would not even permit the News to formulate its final proposals.) Instead, on the first day of the layoff the publishers offered to accept mediation by a *third party of Mr. Hoffa's choice.*

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[12]*American Ship Building,* 380 U.S. at 308, footnote 8.

[13]*Labor Board* v. *American Stores Packing Co.,* 58 LRRM 2635 (CA 10), and the Order remanding that case for reconsideration by the Board (CA 10, March 15, 1965), cited by petitioner (Pet. 8, fn. 5), have no relevancy. There, a refusal to bargain charge was sustained and originally enforced by the 10th Circuit where the employer, at the first bargaining session after the old contract expired, announced that there would be no bargaining except on the employer's proposals and remarked that the union could sit there "until hell freezes over" before the employer would agree to any union proposals. Despite this, the 10th Circuit remanded the case to the Board on petition for rehearing to reconsider it in the light of *American Ship Building. Simplot Co.* v. *Labor Board,* 60 LRRM 2096 (CA 9, June 29, 1965), cited by petitioner (Pet. 8, 9, fn. 5) is equally irrelevant. There, the 9th Circuit also remanded the case for reconsideration in the light of *American Ship Building.* In that case (145 NLRB 171), unlike this, the Board had found independent evidence of anti-union motivation and that a lockout had been threatened to undermine the union. Nor was the lockout in this case used as an "offensive" weapon to force acceptance of the employer's demands in the face of union assurance that there would be no strike, as in *Utah Plumbing & Heating Contractors Assn.* v. *Labor Board,* 294 F. 2d 165 (CA 10, 1961), or resorted to when there was no threat of strike as in *Quaker State Oil Refining Co.* v. *Labor Board,* 270 F. 2d 40 (CA 3, 1959).

The second premise, i.e., that the lockout's purpose was to affect Free Press bargaining, is equally faulty. It is a studied effort to gain some support somehow from *Pennington*, cited, 381 U.S. 657. Again, the Board (but not petitioner) made the same argument to the Court below on its petition for rehearing. It was denied (Pet. App. B 86). We find no relevancy in *Pennington*. It was an antitrust case in which the United Mine Workers and certain employers reached beyond their bargain to impose terms on others, who did not participate, with the purpose and effect of driving them out of business. In support of its finding the Court stated that a labor union forfeited its antitrust exemption when it and an employer sought to bargain about wages, hours and working conditions of other bargaining units. 381 U.S. at 666, 668.

By contrast, the News was concerned with *its* bargain not that of the Free Press except to the extent that the latter bargain might influence its own ultimate contract. The Court below and the Board itself so found, stating that the News' concern was with *its own bargaining position* (Pet. App. A 15, 18, B 25, 48). To assert, as petitioner does (Pet. 11), that the decision below "confers upon employers the right to spread industrial strife beyond the confines of a primary dispute whenever they deem it in their bargaining interest to do so," is beyond belief. The decision below was made in the context of *this* case where the identical dispute and the same "industrial strife" existed at both papers. One had been struck and the other threatened with a strike over the same dispute. How the News' layoff under these circumstances served to "spread" industrial strife is beyond us.

The third premise, i.e., that the Teamsters were bound by contract not to strike the News, was at no time supported

by the Board. It is completely false as has been demonstrated in detail in the preceding Statement. This afterthought by the Teamsters is totally inconsistent with their actual conduct of the 1961-1962 negotiations. Their refusal to extend the old contract, their overwhelming vote of strike authority, and Mr. Hoffa's threat of a strike on the eve of the lockout belie any claim that they were somehow bound not to strike the News by virtue of an old contract which they had allowed to expire many months before.

We have extended this brief beyond the usual limits of a brief in opposition because of the peculiar nature of this particular case. We feel that a fair consideration of the petition requires some statement of the case other than a series of flat assertions, without record reference, such as characterize the Petition. The fact is that bargaining in the newspaper business, and particularly in Detroit, is such that it cannot be related to normal industrial bargaining. The claim that the decision below will have far reaching consequences is absurd. The large automobile manufacturers, whose bargaining is referred to, have never engaged in the type of bargaining which characterize respondents' negotiations. They are not organized on a craft basis, they are not closely allied, they have no bargaining association and they have not historically taken a common stand as have respondents with the several craft locals representing employees of both. Nor was this an *ad hoc* alliance, temporarily entered into for the purpose of influencing this particular bargain. It was an historic fact well known to all unions with which respondents dealt.

CONCLUSION

The decision of the lower Court correctly applied the principles of *American Ship Building* and *Brown* to the facts of this particular case. Its decision therefore presents no novel or important question of legal principle warranting review by this Court. It involves only the application of settled principle to the facts of this particular case. This is implicit in the Board's failure to petition for review, as it had the right to do. Because of the peculiarities of bargaining in the newspaper industry (and more particularly Detroit) the decision below can have no widespread implications, nor does it conflict with any decisions of other Courts of Appeal. Accordingly, no ground for review by this Court exists.

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: October 10, 1965.

APPENDIX "A"

61 Stat. 140, 29 U.S.C. §158(d)(4) [in pertinent part]:

". . . Provided, that where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall thereafter terminate or modify such contract, unless the party desiring such termination or modification—

* * *

"(4) continues in full force and effect, without resorting *to strike or lockout,* all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:"

61 Stat. 153, 29 U.S.C. §173(c) [in pertinent part]"

"If the Director of Mediation Service is not able to bring the parties to agreement by conciliation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort *to strike, lock-out,* or other coercion."

61 Stat. 155, 29 U.S.C. §176 [in pertinent part]:

"Whenever in the opinion of the President of the United States, a threatened or actual *strike or lock-out* affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several

States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved. . ."

61 Stat. 155, 29 U.S.C. §178(a) [in pertinent part]:

"Upon receiving a report from a board of inquiry, the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such *strike or lock-out* or the continuing thereof, and if the court finds that such threatened or actual *strike or lock-out* - - -

"(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in production of goods for commerce; and

"(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such *strike or lock-out* or the continuing thereof, and to make such other orders as may be appropriate."

cf. also: *Labor Board* v. *Truck Drivers Union*, 353 U.S. 87, 92 and footnote 16.